

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

ENERGY SYSTEMS OF CARIBBEAN, INC.

Plaintiff,

v.

CAPSTONE TURBINE CORPORATION

Defendant.

CIVIL NO.

RE: BREACH OF CONTRACT

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COMES NOW defendant, Capstone Turbine Corporation (“Capstone”), through its undersigned counsel, and very respectfully states and prays:

I. Introduction

1. On August 22, 2018, plaintiff, Energy Systems of Caribbean Inc., filed a complaint (“Complaint”) against Capstone before the Commonwealth of Puerto Rico Court of First Instance, San Juan Superior Court, under the caption: Energy Systems of the Caribbean Inc v. Capstone Turbine Corporation., Civil Action No. SJ 2018 cv 06543 (904) (“the state action”)¹. See copy of Complaint attached as Exhibit 1. Insofar as the undersigned counsel received the necessary information and documents only late last Friday afternoon, August 24, 2018, there has not been enough time to provide a certified translation. Capstone has requested, under separate cover, an extension of ten days to provide translations of all state court documents.

2. On August 24, 2018, the Complaint directed or addressed to Capstone were

¹ This complaint was filed to dispute the termination of a contract- whose effective date is April 1, 2016- even though that contract has an arbitration clause which covers the instant controversy. All relief including monetary and injunctive relief should be presented in arbitration.

delivered to Capstone's in-house counsel, Colby Petersen. See copy of the summons Exhibit 2. A motion requesting injunctive relief and an order to show cause were also delivered to Mr. Petersen. See Exhibits 2 and 3.

3. Defendant respectfully removes the state action pursuant to 28 U.S.C. §§1441 and 1446. As will be discussed below, this Court has original jurisdiction pursuant to 28 U.S.C. §1332 (a) (1) because plaintiff and defendant are citizens of different states and the amount in controversy exceeds \$75,000.00, excluding interest and costs. In addition, this Notice of Removal has been filed in a timely fashion in compliance with the procedure for removal of a civil action filed in state court.

4. Capstone will file a motion to stay or dismiss the Complaint and compel arbitration under the Federal Arbitration Act as well as to stay both the answer to the Complaint and the request for injunctive relief while the arbitration is pending. The arbitration proceedings have been already commenced by Capstone at the American Arbitration Association.

II. Statement of Removal Grounds

5. Under 28 U.S.C. §1441 (a) "... any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants to the district court of the United States for the district and division embracing the place where such action is pending". Defendants respectfully submit that the United States District Court for the District of Puerto Rico has original jurisdiction over this state court action under 28 U.S.C. §1332(a)(1). Pursuant to 28 U.S.C. §1332(a)(1), this Court has jurisdiction over all civil actions between citizens of different states where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. As will be explained below, all the indispensable and necessary parties to the Commonwealth court action are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. Original Jurisdiction

Complete Diversity of Citizenship of the Parties

6. Plaintiff, Energy Systems of Caribbean Inc. is a corporation organized under the laws of the Commonwealth of Puerto Rico and has its principal place of business in Puerto Rico. See paragraph 1 of the Complaint.

7. The defendant, Capstone, is a corporation organized under the laws of the State of Delaware and has its principal place of business in the State of California. See paragraph 2 of the Complaint.

8. The foregoing was the citizenship of the parties both at the time of commencement of the action and at the time of removal.

Amount in Controversy

1. Plaintiff alleges in paragraph 15 of the Complaint that he is owed an amount in excess of one million dollars under Puerto Rico Act No. 75 of June 24, 1964, exclusive of interest and costs. Thus, in the aggregate, the amount in controversy in the Commonwealth court action exceeds \$75,000.00, exclusive of interest and costs.

Timely Filing

2. The present notice of removal is filed after a copy of the Complaint and summons were delivered to an employee of the defendant on August 24, 2018. The notice of removal is being filed within thirty (30) days after Capstone was made aware of this lawsuit in the manner stated above. 28 U.S.C. § 1446(b)(1). See Exhibit 2. Capstone reserves the right to question service of process in due course.

Rule of Unanimity

3. Capstone is the only defendant in the case and, thus, is the only defendant who must consent to this removal. 28 U.S.C. § 1446(b)(2)(A).

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing of the present Notice of Removal, written notice of the filing of the notice, as well as a copy of the notice, is being filed today with the clerk of the Puerto Rico Court of First Instance, San Juan Superior Court, and served to the Plaintiff through its legal counsel of record in the Commonwealth court action. Another copy of the removal was also sent to Plaintiff's address Calle Calaf #400, Oficina 351, San Juan, Puerto Rico 00918.

WHEREFORE, Capstone hereby very respectfully gives notice of the removal of the Commonwealth court action pursuant to 28 U.S.C. §§1441 and 1446.

RESPECTFULLY SUBMITTED.

It is hereby certified that, on this same date, a copy of this Notice of Removal and exhibits thereto have been sent to the attorney for plaintiff, Jorge Peirats, Pietrantonio Mendez & Alvarez, Banco Popular Center, 19th Floor, Hato Rey Puerto Rico 00918, by certified mail, return receipt requested, postage prepaid and his email address jpeirats@pmalaw.com. Another copy of the removal was also sent today certified mail, return receipt requested to Plaintiff's address Calle Calaf #400, Oficina 351, San Juan, Puerto Rico 00918.

In San Juan, Puerto Rico, this 28th day of August 2018.

GOLDMAN ANTONETTI & CÓRDOVA, LLC
Counsel for defendant Capstone
PO BOX 70364
SAN JUAN, PR 00936-8364
TEL. (787) 759-4139 / FAX (787) 474-2417

S/ Rossell Barrios
ROSSELL BARRIOS
USDC-PR No. 200904
rbarrios@gaclaw.com